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IN THE

Supreme Court of the United States

October Term, 1967
No. 1327

SYDNEY N. FLOERSHEIM, ELAINE A. FLOERSHEIM, PAUL PINK, HERMAN WINTERS and RALPH SCHNEIDER,

Petitioners,

vs.

HAROLD J. POWERS, DIRECTOR OF THE DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS OF THE STATE OF CALIFORNIA,

Respondent.

Petition for Writ of Certorari to the Court of Appeal of the State of California, Second Appellate District, Division Five.

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Respondent.

Petition for Writ of Certorari to the Court of Appeal of the State of California, Second Appellate District, Division Five.

Petitioners, Sydney N. Floersheim, Elaine A. Floersheim, Paul Pink, Herman Winters and Ralph Schneider, pray that a Writ of Certiorari issue to review a judgment of the Court of Appeal of the State of California, Second Appellate District, Division Five, whereby the judgment of the Superior Court of the State of California in and for the County of Los Angeles, was affirmed in part and reversed in part.

Opinion Below.

The opinion of the court below is reported at 256 A.C.A. 242. It is set out hereinafter as Appendix "A".

Jurisdiction.

1. The judgment of the Court of Appeal was dated and entered November 21, 1967 (App. "A").

2. Petition for Rehearing in the Court of Appeal was denied on December 11, 1967 (Cert. Rec.).

3. Petition for Hearing in the Supreme Court of California was denied January 19, 1968 (Cert. Rec.). No extension of time within which to petition for certeriorari has been requested.

4. The statutory provisions believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari are 28 U.S.C. 2101 (c) and Rule 22 (3) of this Court.

Questions Presented for Review.

1. Is Section 6853 of the California Business and Professions Code, if construed to prohibit the mere sale of forms to be used in an effort by the purchaser to collect debts without services by the seller of the forms, void and unconstitutional under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 1 and 9 of the California Constitution?

2. Is Section 6853 of the California Business and Professions Code void as offending Constitutional requirements of California as to entitling under Article IV, Section 24 of the California Constitution?

Constitutional Provisions Involved.

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1. of the Fourteenth Amendment to the United States Constitution provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 1 of the California Constitution provides:

> "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."

Article I, Section 9 of the California Constitution provides:

> "Every citizen may freely speak, write, and publish his sentiments on all subjects, being respon-

sible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. . . ."

Article IV, Section 24 (now Section 9) of the California Constitution provides:

"A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended." (New section adopted November 8, 1966). (The provisions of this section were transferred from section 24).

California Business and Professions Code Sections Involved.

"6852. 'Collection agency' means and includes all persons engaging, directly or indirectly and as primary or secondary object, business, or pursuit, in soliciting claims for collection or in the collection of claims owed or due or asserted to be owed or due to another."

"6853. Any person using a fictitious name in collecting its own claims with the intention of conveying to the debtor that a third party has been employed and any person, who sells or offers to sell, forms represented to be a collection system, scheme, or device, intended or calculated to be used to collect claims is a collection agency and is subject to the provisions of this chapter."

"6871. 'In addition to any other penalty, any person, firm, corporation or voluntary association, or any officer or director of any corporation or association carrying on business as a collection agency unless *he*

shall hold a valid collection agency license pursuant to this chapter or who carries on such business after the revocation or expiration of any license is guilty of a misdemeanor and punishable by a fine not exceeding *one thousand dollars* ($1,000) or by imprisonment not exceeding *one year* or by both fine and imprisonment.

Duty of prosecuting officer. The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his jurisdiction.'"

Statement of the Case.

1. The Cross-Appeals.

Both plaintiff and defendants appealed [Clk. Tr. 123, 129] from different portions of the judgment [Clk. Tr. 113].

2. The Parties.

The plaintiff is Director of the Department of Professional and Vocational Standards of the State of California [Clk. Tr. 83]. Defendants, Mr. and Mrs. Floersheim are engaged as proprietors in the business of selling forms and rendering certain services incidental thereto; the other defendants are their employees [Clk. Tr. 83, 85].

3. The Nature of the Action and the Relief Sought.

Plaintiff brought the action under color of Section 6872, Business and Professions Code, which authorizes plaintiff to sue to enjoin conduct allegedly constituting the unlicensed operation of a collection agency. On the part of plaintiff it was contended that the sale of defendants' forms, both alone and in connection with the incidental services rendered, constituted the business of a collection agency for which defendants were required

to, but admittedly did not, obtain a collection agency license [Clk. Tr. 1-24]. Defendants consented to a limited injunction against the rendition of certain addressing services [Clk. Tr. 211] but otherwise resisted plaintiff's action. In addition, defendants counterclaimed for declaratory relief and for injunctive relief against official harassment of their customers and interference with defendants' business [Clk. Tr. 70-73].

4. The Original Judgment of the Trial Court (Appendix "B").

(a) *On the Complaint:* The Superior Court found that defendants' operations did not constitute the collection agency business within the meaning of Section 6852 [Clk. Tr. 103] and that the sale of forms without the rendition of services did not constitute the collection agency business within the meaning of Section 6853 if validly construed [Clk. Tr. 105], but that the rendition of mailing and forwarding services in connection with the sale of forms constituted the collection agency business within the meaning of Section 6853 [Clk. Tr. 104-105]; also, the court seemingly found that certain forms were objectionable as bearing fictitious names so as to come within the provisions of Section 6853. Accordingly, defendants were enjoined from selling the forms found objectionable and from selling any forms if services were rendered in connection therewith [Clk. Tr. 115]; the sale of forms alone was excepted from the operation of the injunction and declared not to constitute the collection agency business [Clk. Tr. 115-116].

(b) *On the Counterclaim:* The court found that plaintiff had warned defendants' customers not to use forms sold by defendants and threatened such custom-

ers with disciplinary proceedings, with the result that such customers refused to order or use forms supplied by defendants or to pay defendants for forms already purchased from them, to defendants' irreparable injury in loss of investment, profits, good will, employment security, wages, and commissions [Clk. Tr. 101-102]. Accordingly, the court enjoined plaintiff from taking or threatening reprisal against any one by reason only of the mere fact of the sale, purchase, or use of defendants' forms which do not violate other provisions of the injunction or law [Clk. Tr. 111-112].

5. Judgment After Decision by the Court of Appeal (Appendix "C").

The judgment affirmed all relief granted plaintiff and reversed all relief granted defendants.

6. Summary of Material Facts.

For many years stationers and others sold printed forms for the use of creditors and collection agencies in communicating with debtors in attempts to collect debts. A number of forms are arranged in sets or series of graduated intensity or urgency, for use in successive mailings in case of continued nonpayment [Clk. Tr. 101; Deft. Exs. C, F, G, H].

Payment demands are forbidden to simulate legal process (Sec. 527, Penal Code) and are subject to general laws respecting unfair or deceptive business practices (Sec. 3369, 3370, Civil Code; Secs. 17000-17101, 17550, 17500.1, Business and Professions Code). It is not contended that defendants' forms or business methods now in issue violate any of those enactments [Clk. Tr. 81-82]. The sole question is whether defendants are required to be licensed as a collection agency in

order to sell their forms or render incidental mailing and forwarding services.

In 1940 plaintiff's predecessor in authority sought to require a collection agency license of a form-seller under the statutory provision (Sec. 2, Act 1640, Deering's Gen. Laws), since codified as Sec. 6852, Business and Professions Code. The then Attorney General (now Chief Justice) Warren rendered a contrary opinion, holding that

> "the mere sale of forms to a creditor to be used by him in the collection of claims due him cannot be said to be soliciting claims for collection, nor does it constitute the collection of claims even indirectly or as a secondary object. Such person, it seems to us, is in no different position than a stationery store selling forms to be used for such purposes." (Calif. Atty. Gen. Opinion No. NS 2785, July 23, 1940).

In 1941 the collection agency law was amended (Stats. 1941, ch. 1155) and the substance of what is now Sec. 6853, Business and Professions Code, was added. We shall deal with this enactment in detail below in the Argument, but for the present it may be noted that in general the amendment purported to require a collection agency license for the sale of collection forms.

Notwithstanding this enactment the State authorities have not moved against the numerous stationers and others engaged in the open and notorious sale of collection forms [Clk. Tr. 101]. (State witnesses, experts in "collection agency" regulation, generally professed ignorance of such sale [Rep. Tr. 341-356, 600-601,

662], with which the trial judge was quite familiar [Rep. Tr. 600, 621]. But even when samples of others' collection forms were submitted to the State's chief prosecutor in this action "it didn't occur" to her to do anything about it) [Rep. Tr. 662-663].

Defendants have been engaged in the sale of forms since at least 1953 [Deft. Ex. C, pp. 4-5]. Among their customers are well-known financial institutions (Bank of America and Crocker-Anglo Bank) public utilities (Pacific Telephone and Southern California Gas Co.), and collection agencies [Rep. Tr. 566].

The previous litigation some of the forms which defendants formerly sold (since discontinued) were found to contravene other provisions of law, but the State's attempt to impose a collection agency licensing requirement was adjudged against it [Deft. Ex. 1]. The circumstances of this adjudication, which defendants contend is *res judicata,* are discussed below in the Argument.

Three kinds of forms are now involved: Payment Demand, Skip Locator, and Asset Locator [Clk. Tr. 86]. The only one which makes any demand for payment or attempt to collect is the Payment Demand form [Clk. Tr. 33-38]. It sets forth the name of the creditor plainly and requests payment directly to him. No provision is made for remittance to the defendants. Claims are not assigned to defendants, and defendants' compensation is not contingent on or measured by collections; defendants are paid a flat sum per mailing piece [Clk. Tr. 24, 26, 40]. The demand forms are plainly entitled "Payment Demand", which of course they are.

The Skip Locator and Asset Locator forms are short questionnaires designed to verify or ascertain the addressee's current address, employment, etc. [Clk. Tr. 41-43].

Each of these forms is printed on an IBM-style card which is addressed to the debtor and enclosed in a window envelope so that his name and address show through. The envelope bears a Washington, D.C., return address, which is an office maintained by defendants [Rep. Tr. 436]. There is no contention that any of the forms simulates any governmental form or claims identification with any government agency [Rep. Tr. 462].

In the past, the forms have sometimes been addressed and stuffed into envelopes by defendants, sometimes by the creditors to whom they are sold. Without conceding any impropriety, defendants consented to an injunction against their addressing the forms or stuffing them in envelopes [Clk. Tr. 82]. Accordingly, for the purpose of adjudging defendants' operations it should be assumed that the creditor addresses the form and encloses it in the envelope.

The mailing pieces are either stamped (by the creditor or by defendants) or run through defendants' postage meter. Defendants mail them from Washington, D.C. [Clk. Tr. 87-88].

Defendants' connection with the Payment Demand forms ends with their deposit in the mail, except that the post office returns undelivered forms to defendants' Washington office, whence they are returned to the creditors [Rep. Tr. 483-485].

The Skip Locator and Asset Locator forms are sent out with reply envelopes addressed to defendants' Wash-

ington address, postage to be paid by the addressee. When returned to defendants, these forms are sorted and forwarded to the creditors who bought them [Clk. Tr. 89-91].

In 1953 defendants submitted substantially similar forms to the Chief of the Division of Collection Agencies and the members of the Collection Agency Board (plaintiff's predecessor as licensing authority) and received assurances from all of them that a collection agency license was not required for defendants' operations [Clk. Tr. 100].

In 1959 plaintiff's predecessor in office approved certain forms sold by defendants (including forms substantially similar to those now involved) without attempting to require a collection agency license of defendants [Clk. Tr. 100].

The defendants believed and relied on the statements and representations made to them by State collection agency licensing authorities, and in reliance thereon advertised, employed salesmen and office employees, solicited orders, and caused large quantities of forms to be printed, all at great expense to defendants [Clk. Tr. 100-101].

The present head of the collection agency licensing authority refused defendants' request to pass on the propriety of forms submitted to him for approval and advised them to consult their own counsel; he did not disclose any intention of requiring a collection agency license of defendants [Clk. Tr. 100].

Although defendants once received official assurance that they did not require a license, some of their forms were approved by plaintiff's predecessor in office, and

the licensing agency head refused comment on forms which defendants submitted to him, plaintiff now contends that defendants' business requires a collection agency license; moreover, not content with prosecuting this litigation, plaintiff has acted to dissuade defendants' customers from continuing to buy and use defendants' forms [Clk. Tr. 101-102]. The boycott thus officially promoted has been effective, not only with collection agency customers who are vulnerable to threatened license-revocation proceedings [Rep. Tr. 280-285], but also with State-regulated public utility customers which are understandably sensitive to official displeasure [Rep. Tr. 228-231]. The result has been that some customers have refused to reorder forms from defendant, some have returned forms already bought, and some have even refused to pay for forms already used [Clk. Tr. 98, 101-102; Deft. Ex. C. pp. 9-10].

Jurisdictional Grounds Previously Raised.

1. The Judgment of the trial Court held that Section 6853 of the California Business & Professions Code, if construed to prohibit the mere sale of forms without services unless a Collection Agency license was first obtained, would be void and unconstitutional as in contravention of the rights of petitioners under the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 1 and 9, of the California Constitution (App. "B").

2. The brief of petitioners in the California Court of Appeal urged that Section 6853 of the Business & Professions Code offended the Constitutional requirements of the State as to entitling under Article IV, Section 24. This was overruled by the trial court and upheld by the Court of Appeal.

3. The brief of petitioners in the California Court of Appeal urged that the requirement of a license for the sale of the forms constituted a restraint in violation of Constitutional guarantees of free speech and press under the Fourteenth Amendment to the United States Constitution and Article I, Sections 1 and 9, of the California Constitution. This was upheld by the trial Court and reversed by the Court of Appeal.

4. The brief of petitioners urged that the requirement of a license for merely selling the forms constituted an unreasonable regulation violative of the due process clauses of the United States and California Constitutions. This was upheld by the trial Court and reversed by the Court of Appeal.

5. The Constitutional issues referred to hereinabove were also raised in the Petition for Rehearing in the Court of Appeal and in the Petition for Hearing in the California Supreme Court, but to no avail.

ARGUMENT.

I.

Section 6853 of the California Business and Professions Code Is Void as It Pertains to a Mere Sale of the Forms and the Petitioners' Business.

The right to free speech and a free press is protected against STATE interference by the 14th Amendment to the United States Constitution (*Near v. Minnesota,* 283 U.S. 697) and by California Constitution Art. I, Sec. 9.

> *These rights are not limited to literary or political expression; they extend also to commercial and other communications* (*In re Schillaci,* 196 Cal. App. 2d 591, 594), subject only to carefully limited police regulations where there is a clear and present danger of substantive evils (*Katzev v. County of Los Angeles,* 52 Cal. 2d 360, 367); and these rights encompass not only the right to publish, but also the right to circulate, as by handbilling (*Lovell v. Griffin,* 303 U.S. 444) and mailing (*Lamont v. Postmaster General,* 381 U.S. 301).
>
> *Licensing is an unconstitutional form of previous restraint on communications: Lovell v. Griffin,* 303 U.S. 444; *Thomas v. Collins,* 323 U.S. 516 (Closing Br. pp. 10-11).

The requirement of a license constitutes unreasonable regulation violative of due process of law. It is well settled that the right to carry on an established business is a property right which is entitled to constitutional protection under the due process clauses of the Federal and State Constitutions:

> *Bueneman v. City of Santa Barbara,* 8 Cal. 2d 405, 407, 408.

As said *In re Fuller*, 15 Cal. 2d 425, 431,

> "a lawful occupation may be regulated for the protection of the public *but the degree of such regulation must be commensurate with the evils to be remedied,*" moreover, "Such a requirement (i.e., licensing) must be based on *a reasonable* classification" (Emphasis supplied). And see *Blumenthal v. Board of Medical Examiners*, 57 Cal. 2d 288.

There can be no doubt, and plaintiff does not deny that the business of form-selling is a lawful occupation. If the *State deems any commercial form objectionable in content or method of distribution it may prosecute it under one or more of the several laws aimed at specific evils. Or, it may enact new legislation specifically directed at any particular evils for which it is believed no remedy now exists.*

A commercial communication comes within the protective clauses of the constitution as set forth hereinabove.

The trial court found that if validly construed, Sec. 6853, Business and Professions Code, does not require a collection agency license for the sale of collection forms constituting a system, scheme, or device [Clk. Tr. 105]. Thus far, defendants agree with the court below.

Despite the finding just referred to, the trial court enjoined the unlicensed sale of forms when coupled with the seller's rendition of mailing services. Let us examine the process by which the trial court reached that result.

The trial court read the literal language of Sec. 6853 so as to require a collection agency license of every sta-

tioner and printer who sells forms represented to be a collection system, scheme, or device, intended or calculated to be used to collect claims. That result would be absurd as the trial court recognized. By a process of "construction" the trial court in effect redrafted Sec. 6853, taking as its theme an incomplete reference to Sec. 6852, which itself is inapplicable, as the court found.

Section 6852 defines "collection agency" to mean and include

> "all persons *engaging,* directly or indirectly and as a primary or secondary object, business, or pursuit, *in soliciting claims for collection or in the collection of claims owed or due or asserted to be owed or due to another.*" (Emphasis supplied).

Briefly stated, the essence of the collection agency business as defined in Sec. 6852 consists of engaging in the solicitation of claims for collection or the collection of claims of others. The trial court did not find that defendants were a collection agency within the meaning of Sec. 6852; rather, the court found that Sec. 6852 was inapplicable.

So far as here material, Sec. 6853 deals only with the sale of forms; it says nothing about the rendition of any services in connection with such sale.

Under the interpretation announced by the trial court, the literal language of Sec. 6853, applicable to form-sellers generally, is limited by reference to a part of Sec. 6852. Thus, the trial court held that a collection agency license is required when the forms are "to be used by the purchaser and seller, *as a primary or secondary object, business and pursuit of said seller, in*

the collection of claims owed or due or asserted to be owed or due to the buyer or to a third person." [Clk. Tr. 106]. The emphasized language is an incomplete reference to Sec. 6852, and its incompleteness is noteworthy. In defining "collection agency" Sec. 6852 speaks of "*engaging . . . in* the collection of claims" (emphasis supplied). Defendants do not do that, as the court found. The sale of forms "to be used" in the collection of claims is something other than, and less than, "engaging . . . in the collection of claims" (Sec. 6852). If the sale of forms "to be used" in the collection of claims amounted to "engaging . . . in the collection of claims" then Sec. 6853 could drop out of the case, for Sec. 6852 would be applicable. But it is not, as the trial court found.

Section 6853 may be read with Sec. 852, and indeed with every other statute on the books, but that does not help plaintiff's case. Section 6852 does not apply to the sale of collection forms, as the Attorney General found in 1940 and as the legislature in effect declared when it adopted Sec. 6853 in 1941. All that is left is the mailing of the forms and the sorting and forwarding of returns. These are mere mechanical and clerical services which do not amount to "engaging . . . in the collection of claims" within the meaning of Sec. 6852, whether such activities are carried on by the post office, by regular mailing and messenger services, or by defendants. In a sense, of course, the goods and services furnished to creditors by these agencies and by stationers and telephone and telegraph companies all assist creditors in communicating demands to debtors and thereby facilitate the collection of claims, but the furnishing of such goods and services is not "engaging . . . in the collection of claims."

Furnishing goods or services which facilitate the carrying on of a business is not the same as engaging in the business. For example, an industrial caterer who fed railway maintenance employees was not "engaged in" interstate commerce although his services undoubtedly facilitated such commerce:

McLeod v. Threlkeld, 319 U.S. 491.

To be engaged in the real estate business means to be engaged in that business in the sense that term usually implies:

Younker v. Comm'r (Cal. App. 6), 256 F. 2d 130, 133;

Dillon v. Comm'r (Cal. App. 8), 213 F. 2d 218, 220.

As for "engaging in the business of collecting" see

James v. United Artists Corp., 305 U.S. 410.

There a West Virginia statute taxed persons "engaging within this State in the business of collecting incomes from the use of real or personal property." Film rentals earned in West Virginia were remitted to appellee distributor outside the state. After referring to the statutory language the Supreme Court said:

> "The conduct of such a business or activity by appellee requires its presence there, (in West Virginia) or that of its agent, and the collection of income within the state by one or the other. As it is stipulated and found that appellee carries on no business within the state, except such as is involved in the solicitation of contracts, and has no collection agent there, and as the exhibitors there are bound to and do pay all sums due under their contracts to appellee at points outside the state, we

> can find no basis for saying that it is engaged in collecting income within the state, either as a business or otherwise." (444).

The conclusion is that in order to be engaged in the business of collecting one must actually collect, either personally or by an agent.

As we retrace the trial court's reasoning this is what we find: Sec. 6853 is literally so broad as to require collection agency licenses of stationers and anyone else who sells collection forms. Recognizing the absurdity of that result, the trial court undertook to limit the sweep of Sec. 6853. But it attempted to do so by reading into Sec. 6853 a part of Sec. 6852, which itself does not cover the case. Sec. 6853 is literally too broad to be enforced as written; Sec. 6852 is too narrow to support plaintiff's case.

We recognize that courts often give statutes sophisticated readings, but what has been done here oversteps the bounds. It is a case, not of interpreting the statutes, but of amending them.

What we have said applies to all of defendants' activities, but more particularly to the use of the "Payment Demand" forms, to which the trial court was evidently referring when it spoke of forms "to be used . . . in the collection of claims." The case is even clearer with respect to the "skip-tracing" forms, which do not make any demand for payment or seek to collect anything from anyone. All the "skip-tracing" forms seek is information. That is not included in any statutory definition of the collection agency business, whether in Sec. 6852, Sec. 6853, or elsewhere. "Skip-

tracing" is not "engaging . . . in the collection of claims," any more than a lawyer's investigator is practicing law when he gets information for use in litigation.

If after all is said, it is believed that the statutes could somehow be stretched to cover defendants' operations, the defendants are still entitled to the benefit of any doubt. Engaging in business as a collection agency without a license is made a crime by Sec. 6871, Business and Professions Code. It is the general rule that penal laws are to be strictly construed in favor of the accused, and the rule is applicable in civil proceedings under a licensing statute which provides criminal as well as civil sanctions. For example, in *McPheeters v. Board of Medical Examiners,* 103 Cal. App. 297, a license-revocation case, it is said:

> "The statute is, in its nature, penal and such laws are to be strictly construed in favor of an accused. Nothing is regarded as intended that is not within the letter as well as the spirit of the act; nothing that is not clearly and intelligibly described in the very words, as manifestly intended by the legislature. Crimes built up by courts or boards with the aid of inference, implication and strained construction are repugnant to the spirit and letter of the law. It would be extremely wrong that one should be reasoned into a penalty when the words of an act do not warrant or justify it."

And in *People v. Holtzendorff,* 177 Cal. App. 2d 788, 795, it is said:

> "The defendant is entitled to the benefit of every reasonable doubt as to the true interpretation of words or the construction of language in a statute."

Accordingly, even if it were possible (as we submit it is not) to stretch Sec. 6853 to cover defendants' operations, the coverage of this penal law ought to be restricted to what its language necessarily includes, and its language does not necessarily (if at all) include defendants' operations.

Plaintiff argues that collection-form-selling alone constitutes the collection agency business within Sec. 6853. Accordingly, plaintiff seemingly does not attempt to defend the trial court's theory whereby Sec. 6852, itself found to be inapplicable, was yet restored to as an aid to interpretation whereby in the trial court's view Sec. 6853 is rendered applicable to defendants' operations merely because of their rendition of mailing and forwarding services.

II.

Section 6853 of the California Business and Professions Code Violates the Entitling Provisions of the California Constitution.

It is obvious, we suggest, that the sale of collection forms is not the collection agency business unless the legislature has validly declared it to be such. Unlicensed operation of a collection agency is a crime: Sec. 6871, Business and Professions Code. Criminal statutes must be in the English language: California Constitution, Art. IV, Sec. 24. It may be that, like Humpty Dumpty, the legislature is privileged to make a word mean anything it chooses, and hence may call a "collection agency" something quite different, such as form-selling or mailing. But if the legislature is be-

lieved to have done so in Sec. 6853 its action offends against constitutional requirements as to entitling.

In pertinent part, Article IV, Sec. 24 of the California Constitution provides:

> "Every act shall embrace but one subject which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in its title, such an act shall be void as to so much thereof as shall not be expressed in its title."

The first attempt to regulate the sale of forms was in 1941: Stats. 1941, ch. 1155, sec. 2, p. 2874, the title of which is as follows:

> "An act to amend Sections 1, 2, 3, 3a, 5, 7, 11, 12, and 15 of an act entitled 'An act to define *collection agencies;* to provide for the enforcement of said act and penalties for the violation thereof,' approved May 14, 1927, relating to *collection agencies* and the regulation, supervision and licensing thereof." (Emphasis supplied).

The statutory language which included reference to the sale of forms was codified as Section 6853, Business and Professions Code, in 1943: Stats. 1943, ch. 133, section 1, p. 882, the title of which is as follows:

> "An act to add Chapter 8, comprising Sections 6850 to 6955, inclusive, to Division 3 of, and to add Section 30044 to, the Business and Professions Code, thereby consolidating and revising the law regulating and licensing *collection agencies,* penalizing violations thereof and repealing acts and parts of acts specified therein." (Emphasis supplied).

Neither of the titles just quoted refers in any way to the stationery business or the addressing and mailing business; both of the titles are confined to collection agencies.

The term "collection agency" has a "natural and obvious meaning," which is "the business of collecting debts, claims and demands."

Cuthbert v. Woodman, 185 Cal. 43, 195 Pac. 673.

> "A collection agency is a concern whose business it is to collect all kinds of claims, as well as notes, drafts, and other negotiable instruments, on behalf of others, and to render an account of the same."
>
> 14 Corpus Juris Secundum 1324.

Having regard to the "natural and obvious meaning" of the term "collection agency" (*Cuthbert v. Woodman, supra*), the use of that term in the titles of the 1941 and 1943 acts did not express the subject of regulating the form-selling business or the addressing and mailing business. If either enactment is construed to extend to the regulation of those businesses it is void as to that subject, which is not expressed in the title.

California Constitution, Art. IV, Sec. 24.

Plaintiff has contended that the words "collection agencies" in the titles of the acts sufficiently embrace the sale of collection forms because that activity is defined as the "collection agency" business in Section 6853, Business and Professions Code. Plaintiff thus asserted that the meaning of words in the title of the act may be expanded by a special definition included in

the body of the act. That is surely a "bootstrap" argument which should be rejected.

> Words in a title must be taken in their common and ordinary means, and the legislature cannot in the body of the act impose another or unusual meaning of a term used in the title without disclosing such special meaning therein . . . it is generally held that a title must be construed in the light of its own language without resort to the terms of the body of the statute.
>
> 82 Corpus Juris Secnumdum 379.

Corpus Juris Secundum cites two cases from the State of Washington, which has a constitutional provision like Art. IV, Sec. 24, of our Constitution: *De Cano v. State,* 110 P. 2d 627, 634, 7 Wash. 2d 613; and *Petroleum Lease Properties, Inc. v. Huse,* 80 P. 2d 774, 195 Wash. 254. In the *De Cano* case the statute involved was titled in reference to "aliens", but in the body of the act "aliens" was defined in such a way as to include some citizens; it was held that as to them the statute was void for want of compliance with the requirement that the subject be embraced in the title. In the *Petroleum Lease* case the same result was reached, it appearing that the title of the act referred to "securities" but in the body of the statute the term "securities" was defined so as to cover things not included in it according to ordinary usage.

The constitutional requirement concerning the entitling of acts is meant to give notice of the subject matter of legislature. That purpose will be frustrated if, under the guise of "definition," the body of a statute is per-

mitted to deal with a subject not fairly embraced within the title according to its common and ordinary meaning.

The plaintiff contends that the statute by which he seeks to require a collection agency license for form-selling and mailing and forwarding services is sufficiently entitled under our Constitution to cover such activities under the head of "collection agencies" because the title includes the words "An act to define collection agencies," etc. The contention is that since the title gives notice of an intention to define "collection agencies," the body of the act can constitutionally define "collection agency" to mean anything, whether or not it is a collection agency according to the common acceptance of the term. The argument loads too much on the word "define", which in this application means "To determine the essential qualities of, as a concept or thing; to describe, expound, or interpret; to explain; hence, to determine the precise signification of; to discover and set forth the meaning or meanings of, as a word or term." (Webster's New International Dictionary, 2d ed.) Etymologically and in common acceptance, to "define" a word means to fix its limits, not to invent a new meaning for it or to expand it out of all recognition. For particular purposes a definition may be more expansive than restrictive, but it still has limits. For example, the word "horse" may be defined so as to include a mare or a pony, but to extend it so as to include an alligator is not definition but falsification. That is the case when "collection agency" is "defined" so as to include form-selling and fowarding services.

Conclusion.

The trial court heard a good deal from plaintiff about the asserted evils to be apprehended from the unlicensed sale and mailing of collection and "skip-tracing" forms. In that connection the plaintiff has frequently adverted to the possibility of deception, but it should be recognized that such apprehensions have nothing to do with this case; rather, they were put forward to give color to plaintiff's technical contentions respecting the coverage of the licensing law. The complaint was not founded on any theory of deception, and plaintiff repeatedly assured the court below that he was not contending for any such thing. The question is merely whether defendants' operations required a license under the statute as it is drawn.

The labored arguments by which plaintiff seeks to stretch the licensing law to cover defendants' operations suggest that in plaintiff's view the law was badly drawn and it is his mission to bend it so as to make his notions of policy prevail. It is understandable that a specialized law enforcement agency will take a single-minded approach whereby it sees itself as the peculiar guardian of public policy in the area of its special interest. But public policy is not single, but manifold; it has not one guardian, but many. Policy considerations other than those which preoccupy plaintiff are also entitled to consideration.

Our economy largely rests on commercial credit, as indeed it must. As long as credit is extended there will be defaulting and absconding debtors. Nonpayment of commercial obligations by some tends to increase the price of credit, goods, and services for those who pay their debts. Public policy obviously favors

the payment of debts. But enforced collection of debts by legal process accounts for only a minute proportion of collections, as indeed it must. The courts could not begin to undertake a substantially larger proportion of collections than they do now. If resort to enforced collection by legal process became generally necessary the judicial establishment would break down and the entire credit system would fail, just as the collection of the public revenue would fail if taxpayers generally refused "voluntary" payment and waited for distraint and lien foreclosure. It is in the interest of the public, as well as that of creditors, that to the extent possible debts be collected by means short of legal process.

It is submitted that for the reasons stated, section 6853 of the California Business and Professions Code is void as it affects petitioners' business and accordingly that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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